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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

Conservatorship of the Person and Estate of  
CEWILLA B. ALLEN.

B150646

(Los Angeles County  
Super. Ct. No. BP057907)

MARVIN J. SOUTHARD, as Public  
Guardian, etc.,  
Petitioner and Respondent,

v.

THOMAS STEEN,  
Objector and Appellant;

SHERRY ALLEN,  
Claimant and Respondent.

Appeal from an order of the Superior Court of Los Angeles County.  
Thomas W. Stoevers, Judge. Affirmed.

Law Offices of Larry D. Lewellyn and Larry D. Lewellyn for Objector and  
Appellant.

Lloyd W. Pellman, County Counsel and Stacey S. Lee, Senior Deputy County  
Counsel, for Petitioner and Respondent

Sybil Y. Burrell for Claimant and Respondent.

Thomas J. Steen appeals from an order of the probate court, granting summary adjudication to Los Angeles County Public Guardian Marvin J. Southard (respondent), as Conservator of the Person and Estate of Cewilla B. Allen. The order voided and rescinded a grant deed purportedly conveying to Steen an interest in Allen's real property, quieted title to that property against Steen, and restored to Allen title to and possession of the supposedly conveyed interest. The basis for the order was that Allen had made the deed while she was subject to a temporary conservatorship, and accordingly lacked legal capacity to do so. We find appellant's objections to the order unfounded, and affirm it.

### **FACTS**

In 1999, Allen was 86 years old, and suffered from a variety of medical conditions, including glaucoma and cataracts. Her principal asset was her Los Angeles residence (the property), which she had placed in joint tenancy with her step-granddaughter, Sherry Allen.<sup>1</sup> The property included three dwelling units, two of which were rented. Appellant had resided as a tenant in one of them for many years.

On August 20, 1999, respondent filed a petition for appointment as conservator of Allen's person and estate, as well as a petition for appointment as temporary conservator of both. The petition for permanent conservatorship alleged in part that Allen had given appellant a general power of attorney on March 10, 1999. On March 8, Allen had changed her will, naming appellant executor and sole beneficiary. But when interviewed by a representative of respondent in July 1999, she had not recalled making the will, had denied having done so, and had asked why appellant had not spoken to her about it. Since becoming Allen's attorney-in-fact, appellant allegedly had ceased paying rent, and had attempted to take a loan on the property. The petition for temporary appointment

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<sup>1</sup> Although she did not appear below, Sherry Allen has filed a respondent's brief by reason of her claim to the property by right of survivorship.

repeated the last-stated facts, added that appellant had collected rents from the other tenant of the property, and stated that “Ms. Allen’s accounts have been depleted.”

On August 20, 1999, the date the petitions for conservatorship were filed, the court granted the temporary conservatorship, finding that notice to Allen should be dispensed with, and that it was necessary that a temporary conservator be appointed pending hearing of the petition for general appointment, to protect her property from loss or injury. Letters were issued the same day.

On August 23, 1999, Allen executed a grant deed, which purportedly transferred to appellant and herself, in joint tenancy, her “undivided one-half interest” in the property. The deed further stated: “THIS IS A BONAFIDE [*sic*] GIFT & GRANTOR RECEIVED NOTHING, R & T 11911.”

Thereafter, following service on Allen, respondent’s petition for permanent conservatorship was granted in part, respondent being appointed conservator of her estate. Appellant was ordered to file an accounting as attorney-in-fact, and a competing petition for appointment as conservator of the person. Ultimately, respondent was also appointed conservator of the person.

On July 6, 2000, respondent filed a “Petition for Elder Abuse[;] Rescission; Injunctive Relief; and Declaratory Relief.” The petition’s first cause of action alleged that appellant’s prior activities vis-à-vis Allen, including obtaining the August 23, 1999 deed, constituted financial abuse of an elder, as defined by Welfare and Institutions Code section 15610.30, subdivision (a), which had caused Allen economic damages and also warranted punitive damages and recovery of attorney fees. In a second claim, respondent sought rescission of the grant deed, together with expenses Allen had incurred. A third claim, for injunctive relief, requested that appellant be restrained from transferring or encumbering the property. A fourth sought to quiet title to the property against appellant. The final cause of action prayed a declaration that the deed from Allen to appellant was of no force and effect, that appellant had never acquired any title or interest in the property, and “that title be restored to” Allen.

In February 2001, respondent noticed a motion for summary adjudication of the claims for rescission, quiet title, and transfer of title to Allen. The motion relied on Civil Code section 40 and Probate Code section 1872, subdivision (a), which provide that the appointment of a conservator of the estate is an adjudication of the conservatee's legal incapacity to enter into transactions or conveyances binding the estate, and *O'Brien v. Dudenhoeffer* (1993) 16 Cal.App.4th 327 (*O'Brien*), which held that the appointment of a temporary conservator of the estate invokes those rules, and voided a gift of property a conservatee had made while under temporary conservatorship. Respondent attached, among other exhibits, appellant's responses to requests for admissions, in which he admitted that Allen had made the transfer by deed "without any consideration," and as "a bonafide [*sic*] gift."

In opposition to the motion, appellant relied principally on Probate Code section 1875, which authorizes transactions in real property of the conservatorship estate when "entered into by a person acting in good faith and for a valuable consideration and without knowledge of the establishment of the conservatorship . . . ." Appellant declared that in connection with Allen's deed, he had not been aware of respondent's appointment as temporary conservator. Appellant also filed a "separate statement of disputed facts," which did not respond to the undisputed facts respondent had advanced (namely, that Allen had deeded her share of the property to appellant as a gift while under temporary conservatorship).

On March 6, 2001, the court heard and granted the motion. A formal order was entered on March 26, 2001, declaring the deed void and rescinded, quieting title to the property against appellant, and transferring to Allen title and possession of that portion of the property she had deeded to appellant.

On May 16, 2001, trial commenced with respect to respondent's claim for elder abuse. Called by respondent as the first witness, Allen did not respond to questions, and the court found her not competent as a witness and excused her. She passed away the following morning.

## DISCUSSION

Initially we must address our jurisdiction over this matter. Liberally construed, appellant's notice of appeal seeks review of the order of March 26, 2001, which granted summary adjudication of several, but not all, of the claims in respondent's petition. Such orders are not separately appealable, absent final judgment. (Eisenberg, Horvitz & Wiener, Cal. Practice Guide: Civil Appeals & Writs (Rutter 2002) §§ 2:241-241.1, pp. 2-105–2-106; see Code Civ. Proc., § 427, subd. (m)(1).) We accordingly requested that appellant supply a copy of a judgment or order finally resolving the petition, or provide authority for maintaining the appeal. In response, appellant confirmed that the petition has not been finally adjudicated, but he urged that the summary adjudication order be considered appealable under Probate Code sections 1300, subdivision (k), or 1301, subdivision (f). Although the order substantively resembles the type that are appealable under section 1300, subdivision (k), technically and formally it is not within that category. Nevertheless, in the interests of finality, we shall treat appellant's appeal as a petition for writ of mandate, and decide the appeal on its merits. We proceed to the issues.

Appellant first contends that the probate court erred in failing to require notice of the petition for temporary conservatorship be given, to Allen and to himself, as her attorney-in-fact. Although respondent asserts that this issue may not be raised because a grant of temporary conservatorship is not appealable (Prob. Code, § 1301, subd. (a)), the ruling dispensing with notice would qualify for review under Code of Civil Procedure section 906. On the other hand, it is questionable that appellant has standing to challenge the ruling. Probate Code section 2250, subdivision (c) provides that, “[u]nless the court for good cause otherwise orders,” five days notice of a proposed temporary conservatorship shall be given to “the proposed conservatee.” It does not require notice to her attorney-in-fact, and appellant has not explained why he is entitled to assert an alleged infringement of Allen's right. (Cf. *O'Brien*, *supra*, 16 Cal.App.4th at p. 335 [assuming such standing arguendo].)

In any event, appellant's contention is unavailing on the merits. The petition for appointment stated facts reflecting ongoing jeopardy to Allen's estate that provided good cause for proceeding without notice. Moreover, appointment of a temporary conservator in that manner does not deny due process, or vitiate either the appointment or the conservatee's consequent incapacity to give away her property. (*O'Brien, supra*, 16 Cal.App.4th at p. 335; *Conservatorship of Gray* (1970) 12 Cal.App.3d 513, 523-524.)

Appellant's second contention, that Allen was competent when the temporary conservatorship was commenced and when she subsequently deeded the property, is also unavailing. A finding of incapacity was not required for appointment of the temporary conservator. (See Prob. Code, § 2250, subd. (b).) And once that appointment was validly made, Allen lacked capacity as a matter of law, regardless of any subsequent factual showing. (*O'Brien, supra*, 16 Cal.App.4th at p. 335.)

Appellant next asserts that Evidence Code section 662 required respondent to establish the invalidity of appellant's deed to the property by clear and convincing evidence, and that respondent failed to do so.<sup>2</sup> This assertion is unfounded. Evidence Code section 662 does not apply where legal title is under challenge as void. (*Murray v. Murray* (1994) 26 Cal.App.4th 1062, 1067-1068.) Moreover, there was no dispute about the facts that defeated appellant's claim to title.

Appellant's next two contentions substantially overlap. He argues that even if the temporary conservatorship rendered Allen legally incapable of conveying the property to him, it did not deprive her of capacity to sever or terminate the joint tenancy with Sherry Allen through such a conveyance, which Allen intended to do as part of her "estate plan."

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<sup>2</sup> Evidence Code section 662 provides: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."

Appellant argues that this intent presented a “triable issue of material fact,” precluding summary adjudication.

These issues were never raised in the motion proceedings below. Appellant apparently seeks to advance them now so as to fortify his position as alleged beneficiary of Allen’s estate. He may not do so. However, we believe that the complete voidness of the deed and conveyance would disqualify them from effecting a severance of the preexisting joint tenancy.

Appellant’s remaining contention, discursively presented, is essentially that the petition for temporary conservatorship should have been denied for insufficient evidentiary support. We disagree. The facts alleged in the verified petition were sufficient to support appointment of a temporary conservator.

#### **DISPOSITION**

The order is affirmed.

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COOPER, P.J.

We concur:

RUBIN, J.

BOLAND, J.